

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Andrews Tower Rental, Inc.)	File No.: EB-10-DL-0056
)	
Owner of Antenna Structure)	NAL/Acct. No: 201132500001
ASR#: 1058250)	
Oplin, Texas)	FRN: 0006139463

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: April 7, 2011

Released: April 7, 2011

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Andrews Tower Rental, Inc. (“Andrews Tower”), owner of antenna structure number 1058250, in Oplin, Texas, apparently willfully and repeatedly violated section 303(q) of the Communications Act of 1934, as amended (“Act”),¹ and section 17.51(a) of the Commission’s rules (“Rules”)² by failing to exhibit all red obstruction lighting from sunset to sunrise. We conclude that Andrews Tower is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. Antenna structure number 1058250 (“Tower”), which is owned by Andrews Tower,³ is 134.1 meters above ground in height and is required to be painted and lit.⁴

3. On July 8, 2010, in response to a complaint of a tower light outage in Oplin, Texas, an agent from the Enforcement Bureau’s Dallas Office (“Dallas Office”) contacted the Federal Aviation Administration (“FAA”) and learned that no one had contacted the FAA about a light outage on the Tower,⁵ and that a Notice to Airmen (“NOTAM”) had not been issued for the Tower.⁶ On July 8, 2010, an agent left a voice message at the contact number for Andrews Tower listed in the ASR database about the Tower light

¹ 47 U.S.C. § 303(q).

² 47 C.F.R. § 17.51(a).

³ Andrews Tower is listed as the owner of the structure in the Antenna Structure Registration (“ASR”) database. *See also* Letter from Karen McMillan, owner of Andrews Tower Rental, Inc., to Jim Wells, District Director, Dallas Office, dated October 15, 2010. Ms. McMillan admitted that Andrews Tower Rental Inc. appeared to still own the tower.

⁴ *See* Antenna Structure Registration Database, Registration Number 1058250.

⁵ *See* 47 C.F.R. § 17.48 (requiring owners of registered antenna structures that have been assigned lighting specifications to report immediately to the FAA any observed or otherwise known extinguishment of any flashing obstruction light not corrected within 30 minutes).

⁶ The FAA issued a NOTAM on July 8, 2010, at the agent’s request.

outage.⁷ On July 12, 2010, an agent from the Dallas Office confirmed by direct observation that the Tower's red obstruction lighting was not lit after sunset. On July 15, 2010, Andrews Tower's owner telephoned the agent to state that the Tower lights had not yet been repaired and to request the FAA's telephone number so that it could notify them of the outage.

4. On July 28, 2010, in response to a new complaint about a light outage on the Tower, an agent from the Dallas Office emailed Andrews Tower, but did not receive a response.⁸ On August 17, 2010 and October 14, 2010, the Dallas Office issued letters of inquiry to Andrews Tower about ownership of the Tower, the status of the Tower's lights, and Andrews Tower's monitoring practices.⁹ In response to the second letter of inquiry, Andrews Tower admitted that the Tower's lights were out as of July 8, 2010 and that it did not become aware of the light outage on the Tower until contacted by the agent on July 8, 2010.¹⁰ Andrews Tower stated that the owner of the land on which the Tower is located failed to notify it of the outage.¹¹

III. DISCUSSION

5. Section 503(b) of the Act¹² provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.¹³ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁴

6. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.¹⁵ Section 17.51(a) of the Rules

⁷ On July 8, 2010, Andrews Tower's owner responded to the voice message stating that Andrews Tower did not own the Tower. Andrews Tower subsequently admitted ownership of the Tower. *See supra* note 2.

⁸ *See* email from Dallas Office to Karen McMillan, owner of Andrews Tower Rental, Inc., dated July 28, 2010.

⁹ *See* Letter from James D. Wells, District Director, Dallas Office, to Andrews Tower Rental, Inc. dated August 18, 2010; Letter from James D. Wells, District Director, Dallas Office, to Andrews Tower Rental, Inc. dated October 6, 2010. The second letter of inquiry was sent because the Dallas Office did not receive a response to the first letter of inquiry.

¹⁰ Letter from Karen McMillan, owner of Andrews Tower Rental, Inc., to Jim Wells, District Director, Dallas Office, dated October 15, 2010.

¹¹ *Id.*

¹² 47 U.S.C. § 503(b).

¹³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

¹⁵ 47 U.S.C. § 303(q).

requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.¹⁶ The Tower is over 200 feet in height and is required to be painted and lit.¹⁷ Andrews Tower admitted that the Tower's red obstruction lighting was not lit after sunset as of July 8, 2010, and an agent from the Dallas Office confirmed the Tower light outage on July 12, 2010. Andrews Tower did not notify the FAA of the lighting outage prior to July 15, 2010,¹⁸ even though it was notified of the outage on July 8, 2010. Thus, based on the evidence before us, we find that Andrews Tower apparently willfully and repeatedly violated section 303(q) of the Act and section 17.51(a) of the Rules by failing to exhibit required red obstruction lighting on the Tower after sunset.

7. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to comply with prescribed lighting and/or marking is \$10,000.¹⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁰ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Andrews Tower is apparently liable for a forfeiture of \$10,000 for failing to comply with lighting requirements.

8. We direct Andrews Tower to submit a statement signed under penalty of perjury by an officer or director of Andrews Tower stating: (1) the current status of the Tower's lights, and (2) the method used to make daily determinations that the obstruction lighting on the Tower is functioning properly and any related documentation (logs, monitoring schedule, name of the responsible employees, etc.) that verify the method of daily tower light observation. If the Tower's lights have not yet been repaired, please describe the steps taken to repair the lights and a timetable for completion. This statement must be provided to the Dallas Office at the address listed in paragraph 13 within fifteen days of the release date of this *NAL*.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Andrews Tower Rental, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 303(q) of the Act and section 17.51(a) of the Rules.²¹

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Andrews Tower Rental, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

¹⁶ 47 C.F.R. § 17.51(a).

¹⁷ See 47 C.F.R. § 17.21 (requiring antenna structures more than 200 feet in height to be painted and lighted).

¹⁸ Andrews Tower requested the FAA contact number on July 15, 2010. See para. 3 *supra*.

¹⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, and 17.51(a).

11. **IT IS FURTHER ORDERED** that Andrews Tower Rental Inc. **SHALL SUBMIT** a statement as described in paragraph 8 to the Dallas Office within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Andrews Tower Rental, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, Texas, 75243 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Andrews Tower Rental, Inc. at 2221 Oak Knoll, Colleyville, TX 75034.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas Office
South Central Region
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.